

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RONALD KELLY,

Plaintiff,

vs.

**BNFOCUS 3D TRUCKING, LLC and
JERRY GRAVES,**

Defendants.

Civil Action No. 1:20-cv-2781-WMR

DECLARATION OF MATTHEW W. HERRINGTON

Attorney Matthew W. Herrington hereby submits his declaration, pursuant to 28 U.S.C. § 1746, in support of Plaintiff Ronald Kelly's Motion for Attorney's Fees and Costs of Litigation.

1.

My name is Matthew W. Herrington. I am over the age of twenty-one (21) and suffer from no legal disabilities. I make the following Declaration based on my personal knowledge as well as the contemporaneous business records of my firm.

2.

I have been practicing law since my graduation, *cum laude*, from the University of Georgia School of Law in 2013. I am admitted in all state courts in Georgia, the

United States District Court for the Northern, Middle, and Southern Districts of Georgia, as well as the United States Court of Appeals for the Eleventh Circuit. I have practiced employment law—primarily Fair Labor Standards Act litigation—since approximately October 2013, primarily in the Atlanta metropolitan area but also throughout the state of Georgia. I have been an invited presenter at a CLE session organized by the Georgia chapter of the National Employment Lawyers Association. I have served as counsel in over 100 FLSA cases, including several collective actions.

3.

I, together with Attorney Jack Spradley, have represented the Plaintiff in this action since June 2020. I had primarily responsible for drafting pleadings and motions and conducting settlement negotiations. I briefly consulted attorney Charles R. Bridgers on several occasions.

4.

Our firm has a practice of keeping contemporaneous time and expense records as part of our regular business activity. Individual slips (or records of activities and costs) are created by persons with knowledge of the activities described. The information is tracked in Timeslips, our time and billing software. A true and correct copy of the firms billing records for fees is attached hereto as Exhibit “A”.

A true and correct copy of the firm's billing records for costs is attached hereto as Exhibit "B". These records are an accurate representation of the time, effort, and costs incurred in prosecuting this matter.

5.

As of September 22, 2020, our firm has tracked and incurred \$7,209.25 in attorney fees (see Attachment A) and \$575 in expenses (see Attachment B) in prosecuting this action, for a total of \$7,684.25. After reviewing the billing records and exercising my billing judgment, I decided not to seek 0.6 hours of my own time (\$210) relating to Mr. Spradley's admission to this Court and to revision of the format of the Certificate of Interested Persons because I deemed them to be likely outside the scope of fees properly recoverable under 29 U.S.C. § 216(b).

6.

Additionally, a significant amount of my own time at the outset of this case spent communicating with Attorney Spradley was not recorded and fees for that time are not being sought.

7.

Based on my experience in litigating labor and employment claims including those arising under the FLSA, I am familiar with the hourly rates charged by other civil rights and labor and employment attorneys (and their staffs), including attorneys

who represent primarily plaintiffs and attorneys who represent primarily employers.

8.

My hourly rate of \$350 per hour is reasonable and in line with the rates charged by other attorneys in the Atlanta area who possess similar skill, experience and training. I now charge most of my new clients \$350 per hour whether paid hourly or on a contingency fee basis. This is a modest increase from my previous rate of \$325, which had remained unchanged for two years until January 1, 2020. My current \$350 per hour rate has been approved by this Court, most recently in *Ogier v. M-Entertainment Properties, LLC, et al.*, 1:19-cv-372-TWT, Dkt. 50 (N.D. Ga. May 15, 2020); *Jackson et al. v. American Disposal Service of Georgia, Inc.*, 1:19-cv-4428-AT, Dkt. 33 (N.D. Ga. July 30, 2020).

9.

Based on my experience and training, I possess the requisite skills and knowledge to adequately represent my client and to offer my professional opinion concerning the reasonableness of the number of hours expended in this case and the reasonableness of the hourly rates sought to be recovered.

10.

The expenses and the effort incurred were reasonable to prosecute this matter and to obtain an excellent result for the Plaintiff. As demonstrated in attachments to this declaration, none of the hours expended by counsel or staff has been “excessive,” “redundant” or “unnecessary.” To the contrary, at every opportunity, Plaintiffs’ attorneys attempted to economize and to minimize expenses. As the Court will note, our staff members bill at different rates depending on their experience level. We attempt to assign tasks to the appropriate person to reduce the overall bill.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of September 2020.

s/ Matthew W. Herrington
Matthew W. Herrington
Georgia Bar No. 275411

ATTACHMENT A

Selection Criteria	
Slip Slip Type Clie.Selection	Time Include: Kelly, Ronald

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client		Bill Status	
Description		Reference			
143527	TIME	M. Herrington	1.60	350.00	560.00
6/15/2020		Research-Legal	0.00	T@1	
WIP		Kelly, Ronald			
Research on compensable time issue; communication with co-counsel re: client intake and fee issues					
143529	TIME	M. Herrington	0.70	350.00	245.00
6/15/2020	2:29 PM	ClientComm	0.00	T@1	
WIP		Kelly, Ronald			
Call with client to discuss intake issues; prepare retainer and client info. sheet					
143536	TIME	M. Herrington	0.40	350.00	140.00
6/15/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Call with client; finalize edits to demand letter; email co-counsel					
145385	TIME	M. Herrington	1.60	350.00	560.00
7/1/2020		Compl_COIP_Ser	0.00	T@1	
WIP		Kelly, Ronald			
Draft complaint; review client documents provided; provide draft of complaint to co-counsel for review					
145386	TIME	M. Herrington	0.20	350.00	70.00
7/1/2020		Misc	0.20	T@1	
WIP		Kelly, Ronald		Do Not Bill	
Communication with Bagby re: admission procedures in NDGA; review NDGA admission and pro hac procedures					
145387	TIME	M. Herrington	0.20	350.00	70.00
7/2/2020		Compl_COIP_Ser	0.20	T@1	
WIP		Kelly, Ronald		Do Not Bill	
Revise COIP per new firm format; review Local Rules for requirements; contact CRB re: changes					
144141	TIME	S. Toenes	0.85	125.00	106.25
7/7/2020		Compl_COIP_Ser	0.00	T@1	
WIP		Kelly, Ronald			
Draft COIP; electronically file COIP; create service package; email process server					

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DeLong Caldwell Bridgers Fitzpatrick & Benjamin, LLC
--DCBFB Fee App Time Listing by Date

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client		Bill Status	
Description		Reference			
145388	TIME	M. Herrington	0.20	350.00	70.00
7/8/2020		Compl_COIP_Ser	0.20	T@1	
WIP		Kelly, Ronald		Do Not Bill	
Communication with co-counsel and SMT re: service issues					
144147	TIME	S. Toenes	0.20	125.00	25.00
7/9/2020		ServiceofP	0.00	T@1	
WIP		Kelly, Ronald			
Electronically file Proof of Service; calendar Answer due date					
144228	TIME	J. Sorrenti	0.90	165.00	148.50
7/24/2020		Motions	0.00	T@1	
WIP		Kelly, Ronald			
Discussion with MH re: preparing Motion for Extension of time for Answer; file review; drafted Motion and proposed Order, edited, finalized and filed with Court; emails to and from MH					
144498	TIME	J. Sorrenti	0.10	165.00	16.50
8/13/2020		Misc	0.00	T@1	
WIP		Kelly, Ronald			
Emails to and from MH; review of notice of appearance,					
144561	TIME	M. Herrington	0.30	350.00	105.00
8/18/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Review settlement correspondence from Defendant; Call with client and co-counsel to discuss settlement offer and settlement strategy					
144563	TIME	C.R. Bridgers	0.10	425.00	42.50
8/18/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Discuss settlement process and provide Plaintiff's leaning release to Herrington.					
144566	TIME	M. Herrington	1.40	350.00	490.00
8/18/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Drafting settlement agreement; discuss terms with CRB					
144628	TIME	M. Herrington	0.70	350.00	245.00
8/20/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Finalize settlement offer					

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--DCBFB Fee App Time Listing by Date

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client		Bill Status	
Description		Reference			
144750	TIME	M. Herrington	1.30	350.00	455.00
8/25/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Communications with Def.; discuss settlement issues with CRB and co-counsel; draft revised version of settlement with fees to be determined by court.					
144808	TIME	C.R. Bridgers	0.36	425.00	153.00
8/25/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Review settlement agreement.					
144865	TIME	M. Herrington	1.60	350.00	560.00
8/25/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Begin drafting fee petition and declarations					
144878	TIME	C.R. Bridgers	0.10	425.00	42.50
9/1/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Respond to Herrington re motion to approve settlement.					
144967	TIME	M. Herrington	1.30	350.00	455.00
9/3/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Drafting settlement motion; research on flsa settlement approval where there is no compromise.					
145281	TIME	M. Herrington	0.30	350.00	105.00
9/17/2020		Motions	0.00	T@1	
WIP		Kelly, Ronald			
Finalize draft of motion for approval					
145282	TIME	M. Herrington	1.80	350.00	630.00
9/17/2020	3:26 PM	Motions	0.00	T@1	
WIP		Kelly, Ronald			
Draft fee petition					
145298	TIME	M. Herrington	0.50	350.00	175.00
9/18/2020	10:47 AM	Motions	0.00	T@1	
WIP		Kelly, Ronald			
Continue drafting fee petition					
145335	TIME	M. Herrington	2.40	350.00	840.00
9/18/2020		Motions	0.00	T@1	
WIP		Kelly, Ronald			
Continue drafting motion for fees; begin declarations					

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--DCBFB Fee App Time Listing by Date

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client		Bill Status	
Description		Reference			
145342	TIME	S. Toenes	0.20	125.00	25.00
9/18/2020		Settlement	0.00	T@1	
WIP		Kelly, Ronald			
Pull reports from TS for Motion for Attorneys Fees					
145380	TIME	M. Herrington	1.30	350.00	455.00
9/21/2020		Motions	0.00	T@1	
WIP		Kelly, Ronald			
Continue work on fee petition, finalize.					
145381	TIME	M. Herrington	1.20	350.00	420.00
9/22/2020		Motions	0.00	T@1	
WIP		Kelly, Ronald			
Draft declarations; consult with co-counsel on motion for approval and fee petition; finalize for filing.					
Grand Total					
			Billable	21.21	6999.25
			Unbillable	0.60	210.00
			Total	21.81	7209.25

ATTACHMENT B

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--DCBFB Fee App Expenses_by_Date Order

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Selection Criteria			
Slip.Classification	Open		
Slip.Slip Type	Expense		
Clie.Selection	Include: Kelly, Ronald		
Date		Timekeeper	Rate Type
Status		Activity	Slip Value
Description (first line)		Client	
		Reference	
7/1/2020	EXP	W & H Project	
Billable		\$Filing Fee	\$400.00
Filing of Complaint		Kelly, Ronald	
7/8/2020	EXP	W & H Project	
Billable		\$Service Fee	\$175.00
Service Fee		Kelly, Ronald	
Grand Total			\$575.00